

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,130

IN THE MATTER OF:

Served February 6, 2008

Application of VEOLIA TRANSPORTATION)
SERVICES, INC., to Merge with)
YELLOW BUS SERVICE, INC., Trading)
as YELLOW TRANSPORTATION, WMATC)
No. 280)

Case No. AP-2007-001

Application of VEOLIA TRANSPORTATION)
ON DEMAND, INC., to Acquire Control)
of WASHINGTON SHUTTLE, INC.,)
Trading as SUPERSHUTTLE, WMATC)
No. 369)

Case No. AP-2007-006

Veolia Transportation Services, Inc., (VTS), has applied in Case No. AP-2007-001 for Commission approval under Article XII, Section 3(a)(i), of the Compact, to merge with Yellow Bus Service, Inc., trading as Yellow Transportation, WMATC Carrier No. 280. If the application is approved, VTS proposes conducting operations under WMATC Certificate of Authority No. 280.

Veolia Transportation On Demand, Inc., (VTOD), has applied in Case No. AP-2007-006 for Commission approval under Article XII, Section 3(a)(iii), of the Compact, to acquire control of Washington Shuttle, Inc., t/a SuperShuttle, WMATC Carrier No. 369.

The applications are unopposed.

I. STANDARD FOR APPROVAL UNDER ARTICLE XII, SECTION 3

Under Title II of the Compact, Article XII, § 3(a): A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to

- (i) consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District;
- (ii) purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District; or
- (iii) acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

Section 3(a)(i) applies to the application filed in Case No. AP-2007-001 in that VTS is seeking approval to statutorily "merge" the ownership, management, and operation of its property with Yellow Transportation, "a carrier that operates in the Metropolitan District."¹

Section 3(a)(iii) applies to the application filed in Case No. AP-2007-006 in that VTS and VTOD are both subsidiaries of Veolia Transportation Inc., (VTI) and approval of both applications would result in VTI controlling, through ownership of stock, two WMATC carriers, VTS directly and Washington Shuttle, Inc., t/a SuperShuttle, indirectly through VTOD.²

The Commission may approve an application under Article XII, Section 3, if it finds that the proposed transaction is consistent with the public interest.³ The public interest analysis focuses on the fitness of the acquiring party, the resulting competitive balance, and the interest of affected employees.⁴

II. BACKGROUND

As noted, applicants are requesting Commission approval to merge WMATC Carrier No. 280 (Yellow Transportation) into VTS and bring WMATC Carrier No. 369 (Washington Shuttle, Inc., t/a SuperShuttle) under common control with new Carrier No. 280 (VTS). The Commission has already approved the common control of Yellow and SuperShuttle,⁵ but this does not settle the matter. A third carrier, identified by VTS as "ATC", is implicated, as well.

According to VTS: "Previously, Connex North America, Inc. merged with ATC, and as a result of this merger, Veolia

¹ See *In re Executive Coach, Ltd., & Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver*, No. AP-02-75, Order No. 6797 (Sept. 3, 2002) (merger of commonly controlled WMATC carriers); *In re Laidlaw Transit, Inc., & National School Bus Serv., Inc.*, No. AP-97-08, Order No. 5050 (Mar. 26, 1997) (purchase of WMATC carrier stock by unrelated parent of other WMATC carrier followed by merger of newly acquired WMATC carrier into parent); *Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, & United Mgmt. Corp., t/a Passenger Express*, No. AP-92-12, Order No. 3956 (June 15, 1992) (merger of commonly controlled WMATC carriers); *In re American Coach Lines, Inc.*, No. AP-87-20, Order No. 3094 (Nov. 18, 1987) (merger of non-WMATC carrier into commonly controlled WMATC carrier).

² See *In re Laidlaw, Inc., & Greyhound Lines, Inc.*, No. AP-98-53, Order No. 5504 (Jan. 22, 1999) (purchase of WMATC carrier stock by unrelated parent of other WMATC carrier); *In re Greyhound Corp. & Airport Transport, Inc.*, No. 195, Order No. 951 (June 4, 1969) (same); see also *In re VIP Coach Servs., Inc., & White House Sightseeing Corp.*, No. AP-84-06, Order No. 2550 (May 1, 1984) ("operates in the Metropolitan District" means operates in Metropolitan District under WMATC jurisdiction).

³ Compact, tit. II, art. XII, § 3(c).

⁴ Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC CODE ANN. § 9-1103.04 (2007)); Order No. 6797; Order No. 5504.

⁵ See *In re Washington Shuttle, Inc., t/a SuperShuttle*, No. AP-96-13, Order No. 4966 (Nov. 8, 1996).

Transportation, Inc. was formed." According to VTI's website, "Connex entered the US transportation market in 2001 through acquisitions such as Yellow Transportation in Baltimore, MD." The website further states: "ATC was acquired by Connex North America from National Express in September 2005." Thus, it would appear that VTI acquired control of both Yellow and ATC in September 2005.

ATC held several contracts for transportation service in the Metropolitan District at the time it was acquired - including one with Arlington County, Virginia, primarily for fixed-route service in Arlington but also for charter service; one with King Farm Transportation Demand Management Company, LLC, for shuttle service in Rockville, MD; and one with the Agency for Healthcare, Research and Quality (AHRQ) for shuttle service in Rockville, MD. Part of our analysis therefore must focus on the effect on competition in the Metropolitan District of combining ATC's market share and Yellow's market share under VTI. There is a preliminary fitness issue we must resolve first, however.

III. PRELIMINARY FITNESS ISSUE

VTS proposes commencing operations with approximately three hundred fifty vehicles under several contract tariffs for service to various government agencies and private entities, including the Arlington contract noted above and two contracts with Fairfax County, Virginia. During this proceeding, VTS has taken the position that those three contracts are exempt from our jurisdiction under the Compact exclusion for transportation solely within Virginia.⁶ Although we might agree with VTS with respect to the fixed-route service under those contracts, we cannot agree as to the charter service that all three authorize.

Unlike fixed route service, charter service is not geographically self-confining, and we see no language in the contract documents submitted by VTS limiting the geographic scope of the charter service that VTS may provide. On the contrary, the Arlington contract expressly states that the "contractor shall obtain required charter rights from the Washington Metropolitan Area Transit Commission."

Conversely, we have excluded all vehicles under two other VTS Virginia contracts: one with Engineering Management Company in Arlington; and one with Loudoun County. We see nothing in those contracts that would bring them under our jurisdiction.

VTS verifies that: (1) VTS owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) VTS owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) VTS has access to, is familiar with and will

⁶ Compact, tit. II, art. XI, § 3(g).

comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish an applicant's fitness,⁷ but here there is evidence that VTS has been operating the King Farm contract, (originally held by ATC as noted above), since December 14, 2005.⁸ VTS acknowledges that this contract requires WMATC authority, but VTS has no such authority.

III. ORDER TO SHOW CAUSE

We will give applicants an opportunity to comment on the apparent violations under the King Farm contract before deciding these applications. The response also should identify the carrier or carriers responsible for operating the Arlington County contract and the AHRQ contract since 2005. Applicants shall support their response with pertinent contemporaneous documents.⁹

THEREFORE, IT IS ORDERED:

1. That within thirty days of the date of this order, applicants shall show cause why the Commission should not find Veolia Transportation Services, Inc., and Veolia Transportation Inc., unfit on the ground that Veolia Transportation Services and/or other VTI subsidiaries have been conducting unauthorized operations under the the Arlington County contract, the King Farm contract, and the AHRQ contract continuously since September 2005.

2. That applicants' response shall be corroborated by pertinent contemporaneous documents.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

⁷ *In re Transcom, Inc.* No. AP-05-113, Order No. 10,114 (Nov. 30, 2006); *In re Executive Technology Solutions, L.L.C.*, No. AP-04-84, Order No. 8273 (Sept. 20, 2004).

⁸ The contract is in the name of Connex Transit, Inc. According to the Maryland Department of Assessments and Taxation, that was VTS's name before it was changed in April 2006.

⁹ See *In re Transcom, Inc.* No. AP-05-113, Order No. 9907 (Sept. 13, 2006) (requiring production of carrier invoices).